ever, made this extension on facts exactly similar to those of the principal case. *Applegate* v. *Travelers' Ins. Co.*, 153 Mo. App. 63, 132 S. W. 2. But the court in the principal case seems to have reached a more desirable result in refusing to follow this decision.

INTERSTATE COMMERCE — JURISDICTION OF COMMISSION — COMMON CARRIER. — A corporation was chartered for the purpose of doing an interstate freight business between ports connected by no existing steamship line. The stock was subscribed to conditionally upon the declaration by the Interstate Commerce Commission of rates favorable to the enterprise. Before it had acquired any boats or terminal facilities the company brought its complaint under the Panama Canal Act of 1912, amending the Act to Regulate Commerce, and asked that the Commission require the railroads named as defendants to establish and maintain proportional freight rates, that is, rail rates applicable to through rail and water shipments lower than the local rail rates to the port of loading on vessels. *Held*, that the complaint be dismissed. *Charleston & Norfolk S. S. Co.* v. *Chesapeake & Ohio Ry. Co.*, 40 Int. Com. Rep. 383.

A hardship has apparently resulted to a corporation which seeks in good faith to learn under what rates it will be allowed to do business before spending further funds in an enterprise the success of which depends upon those rates. But the decision that the complainant is not a "common carrier engaged in," etc. and therefore not within the Commission's jurisdiction seems to be a correct interpretation of the terms of the Act to Regulate Commerce. 24 STAT. AT LARGE, 379. The amendment in question does not increase the agencies over which the Commission shall have jurisdiction. It only confers special powers relative to through rail and water carriage. 37 STAT. AT LARGE, 568. And yet the tenor of the Commission's opinion is noticeably different from that of at least two earlier decisions not under this amendment. *Flour City S. S. Co.* v. *Lehigh Valley R. Co.*, 24 Int. Com. Rep. 179; *Suffern Grain Co.* v. *Illinois Central R. Co.*, 22 Int. Com. Rep. 178. In public service regulation by the states the same difficulty in terms exists. Since 1910 several legislatures have included specifically within the jurisdiction of the commissions established corporations organized for public service but as yet transacting no business and acquiring no property. 8 BIRDSEYE, 2153 (1910 N. Y.); PAGE & ADAMS ANN. GEN. CODE, § 614–2*a* (1911 Ohio); 1911 NEW JERSEY LAWS, c. 195, § 15; DIST. COL. APPROPRIATION ACT OF MARCH 4, 1913, § 8, par. 1.

JUDGMENTS — COLLATERAL ATTACK — MISTAKE CONCERNING DEATH OF LEGATEE AS GROUND FOR ATTACK ON PROBATE DECREE. — A testator left a fund in trust to his widow for life, then equal shares to be given to each of his children "or their heirs." After the life estate the trustees under order of court deposited in a bank the share of the plaintiff legatee, one of the children. Later the court, erroneously believing the plaintiff legatee to be dead, decreed that the bank pay the fund to his heirs. Payment was made. The plaintiff now seeks to have the decree vacated and an order made against the bank. *Held*, that although the decree will be vacated, no liability will be imposed on the bank. *Jones* v. *Jones*, 223 Mass. 540.

Since the death of the testator is necessary to confer jurisdiction on the probate court a grant of probate of the estate of a living person is void, and the decree can afford no protection to one acting under it. *Scott* v. *McNeal*, 154 U. S. 34; *Jochumsen* v. *Suffolk Savings Bank*, 3 Allen (Mass.) 87. See 1 WOERNER, AMERICAN LAW OF ADMINISTRATION, § 208; 10 HARV. L. REV. 62. In the principal case, however, the probate court was administering a fund over which it had jurisdiction through the death of the plaintiff's testator. By the terms of the will, at the death of the life tenant the share in question was to go to the plaintiff or his heirs; and the court's mistake of fact as to the